

SECTION 9
ATTACHMENT C
BUSINESS ASSOCIATES AGREEMENT

The Qualified Vendor shall meet the requirements of this attachment and the business associate requirements of Title 45, Parts 160 and 164 of the Code of Federal Regulations (the “CFR”) and, regarding contracts specifically, 45 CFR §164.504(e). In the event of conflicting terms or conditions of this Agreement, this Attachment shall prevail notwithstanding any other term or condition regarding contract order of precedence.

1. Definitions. Capitalized terms not otherwise defined in the Agreement shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference.
2. Use and Disclosure of Protected Health Information. Qualified Vendor shall use and/or disclose Protected Health Information (“PHI”) only to the extent necessary to satisfy Qualified Vendor’s obligations under the Agreement, as Required by Law, or to make a good faith disclosure to an appropriate person or entity about violations of law or certain standards by the Department.
3. Prohibition on Unauthorized Use or Disclosure of PHI. Qualified Vendor shall not use or disclose any PHI received from or on behalf of Department, except as permitted or required by the Agreement, as Required by Law or as otherwise authorized in writing by Department. Qualified Vendor shall comply with: (a) State laws, rules, case law and other law applicable to PHI not preempted pursuant to 45 USC 1320d-7 and 45 CFR §160.203 or the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended; and (b) Department’s relevant health information privacy and security policies and procedures.
4. Qualified Vendor’s Operations. Qualified Vendor may use PHI it creates or receives for or from Department only to the extent necessary for Qualified Vendor’s proper management and administration or to carry out Qualified Vendor’s legal responsibilities. Qualified Vendor may disclose such PHI as necessary for Qualified Vendor’s proper management and administration or to carry out Qualified Vendor’s legal responsibilities only if:
 - (a) The disclosure is Required by Law; or
 - (b) Qualified Vendor obtains reasonable assurance, evidenced by written contract, from any person or organization acting as an agent for purposes of this contract, including any sub-contractor, to which Qualified Vendor shall disclose such PHI, that such person or organization shall:

- (i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Qualified Vendor disclosed it to the person or organization or as Required by Law; and
 - (ii) Notify Qualified Vendor (who shall in turn promptly notify Department) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
- 5. Data Aggregation Services. Qualified Vendor may use PHI to provide Data Aggregation Services related to Department's Health Care Operations.
- 6. PHI Safeguards. Qualified Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI received from or on behalf of Department.
- 7. Electronic Health Information Security and Integrity. Qualified Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320d-2(d) of the United States Code and Title 45, Part 162 and Part 164 of the CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted Health Information received from or on behalf of Department pertaining to an individual. Qualified Vendor shall document and keep these security measures current.
- 8. Protection of Exchanged Information in Electronic Transactions. If Qualified Vendor conducts any Standard Transaction for or on behalf of Department, Qualified Vendor shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the CFR. Qualified Vendor shall not enter into or permit its subcontractors or agents to enter into any Trading Partner Agreement in connection with the conduct of Standard Transactions for or on behalf of Department that: (a) changes the definition, Health Information condition or use of a Health Information element or segment in a Standard; (b) adds any Health Information elements or segments to the maximum defined Health Information set; (c) uses any code or Health Information elements that are either marked "not used" in the Standard's Implementation Specification or are not in the Standard's Implementation Specification(s); or (d) changes the meaning or intent of the Standard's Implementation Specification(s).
- 9. Subcontractors and Agents. Qualified Vendor shall require each of its subcontractors or agents to whom Qualified Vendor may provide PHI received from, or created or received by Qualified Vendor on behalf of Department to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Qualified Vendor by the Agreement.

10. Access to PHI. Qualified Vendor shall provide access, at the request of Department, to PHI in a Designated Record Set, to Department or, as directed by Department, to an individual to meet the requirements under 45 CFR §164.524 of the CFR and applicable state law. Qualified Vendor shall provide access in the time and manner set forth in Department's relevant health information privacy and security policies and procedures.
11. Amending PHI. Qualified Vendor shall make any amendment(s) to PHI in a Designated Record Set that Department directs or agrees to pursuant to 45 CFR §164.526 at the request of Department, and in the time and manner set forth in Department's relevant health information privacy and security policies and procedures.
12. Accounting of Disclosures of PHI.
 - (a) Qualified Vendor shall document such disclosures of PHI and information related to such disclosures as would be required for Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
 - (b) Qualified Vendor agrees to provide Department or an Individual, in the time and manner set forth in Department's relevant health information privacy and security policies and procedures, information collected in accordance with Section 12(a) above, to permit Department to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
13. Access to Books and Records. Qualified Vendor shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of Department available to Department and to the Department of Health and Human Services ("DHHS") or its designee for the purpose of determining Department's compliance with the Parts 160 and 164 of 45 CFR.
14. Reporting. Qualified Vendor shall report to Department, in writing, any use or disclosure of PHI not authorized by the Agreement, by law, or in writing by Department. Qualified Vendor shall make the report to Department's Privacy Official within 5 days after Qualified Vendor learns of such unauthorized use or disclosure, unless a longer period to report the violation has been approved by the Department. Qualified Vendor's report shall at least: (a) identify the nature of the unauthorized use or disclosure; (b) identify the PHI used or disclosed; (c) identify who made the unauthorized use and who received an unauthorized disclosure; (d) identify what Qualified Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; (e) identify what corrective action Qualified Vendor has taken or shall take to prevent future similar unauthorized use or disclosure; and (f) provide such other information, including a subsequent written report, as reasonably requested by Department's Privacy Official.

15. Mitigation. Qualified Vendor agrees to mitigate, to the extent practicable, any harmful effect that is known to Qualified Vendor of a use or disclosure of PHI by Qualified Vendor or its agent(s) in violation of the requirements of the Agreement.
16. Termination for Cause. Upon Department's knowledge of a material breach by Qualified Vendor of the terms of this Attachment, Department shall:
 - (a) Provide an opportunity for Qualified Vendor to cure the breach or end the violation and terminate the Agreement if Qualified Vendor does not make a good faith effort to cure the breach or end the violation within the time specified by Department.
 - (b) Immediately terminate the Agreement if Qualified Vendor has breached a material term of the Agreement and cure is not possible, or
 - (c) If neither termination nor cure is feasible, Department shall report the violation to the DHHS.
17. The Return or Destruction of Health Information.
 - (a) Except as provided in Section 17(b) below, 6 years after termination, cancellation, expiration or other conclusion of the Agreement, Qualified Vendor shall return to Department or destroy all PHI received from Department, or created or received by Qualified Vendor on behalf of Department. This provision shall apply to PHI that is in the possession of subcontractors or agents of Qualified Vendor. Qualified Vendor shall retain no copies of the PHI.
 - (b) In the event that Qualified Vendor determines that returning or destroying the PHI is not feasible, Qualified Vendor shall provide to Department notification of the conditions that make return or destruction not feasible. Upon verification by Department that the return or destruction of PHI is not feasible, Qualified Vendor shall extend the protections of the Agreement to such PHI and limit further uses and disclosure of PHI to those purposes that make the return or destruction not feasible, for so long as Qualified Vendor maintains such PHI.

18. Automatic Amendment. Upon the effective date of any amendment to the U.S. Code or the regulations promulgated by the DHHS with respect to PHI, the Agreement shall automatically amend such that the obligations imposed on Qualified Vendor and shall remain in compliance with such laws.